

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

CRAFTMASTERS ARCHITECTURAL
SHEET METAL, INC.¹

Employer

and

JAMES HUDDLESTON,

Petitioner

and

Case 25-RD-1451

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 20, a/w
SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, AFL-CIO,²

Party-of-Interest

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 7, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.³

¹ The name of the Employer is amended to correctly reflect its legal name.

² The name of the Party-of-Interest is amended to correctly reflect its legal name.

³ Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The labor organization involved claims to represent certain employees of the Employer.

I. ISSUES

The Petitioner, James Huddleston, seeks an election among certain employees of his former Employer,⁴ Craftmasters Architectural Sheet Metal, Inc., in order for the employees to determine whether they wish to continue to be represented for purposes of collective bargaining by the Party-of-Interest, Sheet Metal Workers' International Association, Local Union No. 20, a/w Sheet Metal Workers' International Association, AFL-CIO (hereafter referred to as the "Union"). It is the Union's position that the election petition should be dismissed because an election is barred by a collective-bargaining agreement which has been in effect between the Employer and Union since June 1, 2002, and which does not expire until May 31, 2005. In addition, the Union asserts that even if an election is not barred, the petition should be dismissed because the Petitioner has failed to produce an adequate showing of interest. The Union asserts that the Employer is a member of a multi-employer association whose employees comprise a single bargaining unit. These employees total between 1,400 and 1,500 individuals, while the Petitioner's showing of interest is based solely upon the number of employees employed by Craftmasters, which is approximately 10. The Employer has taken no position in respect to these issues, nor does it assert that there is any other issue in contention. The Petitioner has also expressed no position in respect to these two issues, but has reasserted his desire that an election be conducted among the employees of Craftmasters.

II. DECISION

For the reasons discussed in detail below, it is concluded that the collective-bargaining agreement in effect between the Employer and Union bars an election at this time, and the petition is accordingly dismissed.

III. STATEMENT OF FACTS

Craftmasters is a sheet metal contractor who, in August of 2000, adopted the collective-bargaining agreement then in effect between the Sheet Metal Contractors Association of Central Indiana, Inc. and the Union. By adopting this contract, the Employer also delegated collective-bargaining authority to the Contractors Association. In approximately April 2002, Craftmasters also joined the Association and has remained a member to date. Likewise, the Association has retained authority to represent Craftmasters for purposes of collective-bargaining to date.

The Sheet Metal Contractors Association of Central Indiana, Inc. is a chapter of the Sheet Metal Contractors National Association, which is a national trade association comprised of sheet metal contractors. One of the functions of the National Association and its affiliate chapters is to represent their constituent members for purposes of collective bargaining. Approximately 80 sheet metal contractors located in Indiana have delegated bargaining authority to the Association

⁴ The Petitioner was an employee of the Employer at the time he filed the present petition, however, he terminated this employment approximately two weeks prior to the hearing herein.

of Central Indiana, and approximately 18 contractors are also members of the Association. The 80 contractors employ between 1,400 and 1,500 employees within the multi-employer bargaining unit defined in the parties' current contract.

The current contract between the Contractors Association of Central Indiana and the Union, of which Craftmasters is signatory, is effective by its terms from June 1, 2002 through May 31, 2005. It contains many substantive terms governing the wages, fringe benefits, work hours, health insurance and pension plans, and other terms of employment of employees within the multi-employer bargaining unit. According to the Union, Craftmasters is in compliance with the terms of this contract.

According to the testimony of both the Union representative who negotiated the current contract on behalf of the Union, and the Executive Director of the Contractors Association of Central Indiana who negotiated it on behalf of the Association, at the time the contract was negotiated it was the parties' intent to create a relationship within the meaning of Section 9(a) of the Act. Specifically, Addendum I, Section 3 of the contract states:

SECTION 3. Recognition Clause for a 9(a) Collective Bargaining Agreement:

Inasmuch as the Union has submitted proof and the Employer's bargaining representative is satisfied that the Union represents a majority of its employees in the bargaining unit described herein, the representative recognizes the Union as the exclusive collective bargaining agent for all employees within that bargaining unit, on all present and future job sites within the jurisdiction of the Union, unless and until such time as the Union loses its status as the employee's exclusive representative as a result of an NLRB election, represented by the employees. However, in the event a petition is filed with the NLRB, either before or after the expiration of this Agreement, the Union and Employer (including any Employer assenting to this Agreement subsequent to its effective date) agree that the appropriate bargaining unit shall consist of all employees of all Employers signatory to this Agreement (emphasis in the original).

IV. DISCUSSION

With the exception of an election petition which is filed during the "window period,"⁵ a contract which is currently in effect and whose signatories share a Section 9(a) relationship, constitutes a bar to an election, Hexton Furniture Co, 111 NLRB 342 (1955). The objective of this contract-bar rule is to achieve a reasonable balance between the conflicting goals of industrial stability and freedom of employees' choice. This rule is intended to afford contracting parties and employees a reasonable period of stability in their relationship without interruption, and at the same time afford the employees an opportunity, at a reasonable time, to change or eliminate their bargaining representative if they wish to do so.

⁵ The "window period" during which the Board will entertain an election petition is the thirty (30) day period which lies between ninety (90) and sixty (60) days immediately preceding the expiration of a contract, Deluxe Metal Furniture Co., 121 NLRB 995 (1958).

In the construction industry, even where a parties' relationship originated under Section 8(f) of the Act, a collective-bargaining agreement will create a Section 9(a) relationship if its language unequivocally indicates that a union requested recognition as majority representative; an employer recognized the union as such representative; and the employer's recognition was based upon the union's having shown or having offered to show, an evidentiary basis of its majority support, Staunton Fuel & Material, Inc., 335 NLRB 717 (2001). Once a Section 9(a) relationship is created, any pre-existing 8(f) prehire agreement between the parties is from that point forward a 9(a) agreement, sufficient to bar an election, VFL Technology Corp., 329 NLRB 458 (1999).

In the case at hand, Section 3 of Addendum I of the parties' current contract states that the Association granted 9(a) recognition to the Union based upon evidence submitted by the Union proving its majority status. Although the language does not expressly state that the Union had requested recognition, it states that recognition was granted based upon evidence submitted by the Union, and the Board has found that such language clearly indicates that the Union had requested recognition from the Employer, Saylor's Inc., 338 NLRB No. 35 (September 30, 2002), Sl. Op. at 7; Nova Plumbing, 336 NLRB 633 (2001).

Like the case at hand, in Oklahoma Installation Company, 325 NLRB 741 (1998) the parties' contract stated that the union had submitted evidence of its majority status to the employer, and the employer was satisfied that the union represented a majority of its employees in an appropriate unit. The Board held that this language established a Section 9(a) relationship between the parties.

So, too, it is concluded here that the language of Addendum I, Section 3 of the parties' current contract established a Section 9(a) relationship between the parties, and since the instant election petition was not filed during the appropriate "window period," the contract bars an election at this time.⁶

V. ORDER

According, IT IS HEREBY ORDERED that the petition herein be and IT HEREBY IS DISMISSED.

⁶ Since the petition is dismissed, it is not necessary to rule upon the issue of the adequacy of the Petitioner's showing of interest.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 6, 2004.

Issued at Indianapolis, Indiana, this 23rd day of July, 2004.

/s/ Rik Lineback

Rik Lineback
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

RL/ar

H:\Decisions:25RD1451.doc